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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,898	03/31/2004	Jessica Goodman	5335	9320
23512	7590	02/23/2006	EXAMINER	
EDWARD A SOKOLSKI 3868 CARSON STREET, 105 TORRANCE, CA 90503			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 02/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/815,898

Applicant(s)

GOODMAN, JESSICA

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Iosilevich et al (U.S. Pat. # 5,137,040).

With regard to claims 1-2, Iosilevich discloses a cosmetic kit (20, fig. 1) comprising a backing portion (22) within the kit (it is noted that applicant has not defined a structure of a kit, and the kit will be interpreted as a plurality of items within a group, therefore the backing portion 22 being part of the group), a plurality of receptacles (applicators 10) being on the backing portion, each of the receptacle being positioned and shaped to provide an image representing a different portion of a human face (col. 3, lines 66-68 and col. 4, line 1); makeup material (17) being contained in the receptacles (col. 4, lines 13-15), the material in the receptacles being chosen for use on the portion of the face which that receptacle represents (col. 4, lines 1-4). In regard to claim 5, Iosilevich et al shows the receptacles being attached to the backing portion (fig. 1).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-6, 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Jackson (U.S. Pat. # 6,631,806).

With regard to claims 1-2, Jackson discloses a cosmetic make up kit (figs. 3 and 5) comprising a backing portion (surface for the facial design 10) within the kit (col. 3, lines 4-8), a plurality of receptacles (61, 63, 64, 65 fig. 3) being on the backing portion (col. 3, lines 9-13), each of the receptacle being positioned and shaped to provide an image representing a different portion of a human face (col. 4, lines 30-32); makeup material being contained in the receptacles and the material in the receptacles being chosen for use on the portion of the face which that receptacle represents (col. 4, lines 24-29). In regard to claims 4-5, Jackson shows the receptacles being formed, attached to the backing portion (fig. 5). In regard to claims 6, 8, 9, Jackson shows the kit also having a carrying case with mirror mounted thereon (fig. 5) and a container (fig. 5 shows a cover containing brushes) for storing cosmetic applicators.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over  
losilevich et al in view of Tiramani (U.S. Pat. # 4,936,436).

With regard to claims 6-9, losilevich et al discloses a cosmetic kit comprising all the claimed limitations in claim 1 as discussed above except for the kit further having a carrying case with a cover and a handle, a mirror mounted in the carrying case and a container for storing cosmetic applicators. Tiramani discloses a travel and storage cosmetic case (figs. 1 and 6) comprising a carrying case (12) which includes a cover (18, fig. 6) and a handle (22, fig. 1); the carrying case also having a mirror (48, fig. 6) mounted therein and a container (140, col. 4, lines 24-28) for storing cosmetic applicators. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular carrying case as taught by Tiramani with the cosmetic kit of losilevich et al in order to provide a convenient way of storing all the cosmetic accessories that are readily required for everyday use.

Claims 3, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over  
Jackson in view of Geer (U.S. Pat. # 4,421,127).

With regard to claims 3, 10-13, Jackson discloses a cosmetic kit (figs. 3-5) comprising a backing portion (surface for the facial design 10) on the inside of kit (col. 3, lines 4-8) having a plurality of receptacles (61, 62, 63 fig. 3) thereon. A cosmetic material contained in each of the receptacles for each of different portions of human face (col. 4, lines 30-37). Jackson also shows the kit having a carrying case (fig. 5), a

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mirror (fig. 5) and receptacle (fig. 5) for storing cosmetic applicator. Jackson does not disclose a mask having cutout portions, each of the cutout portions pictorially representing a different portion of a human face and overlying a receptacle which carries the cosmetic for a corresponding portion of the human face. Geer discloses a cosmetic case (fig. 3) comprising a backing portion (38) holding a plurality of cosmetic receptacles (24). Geer also shows a mask (22) having cutout portions (50), each cutout portion overlies a receptacle (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the mask with cutout portions as taught by Geer into the cosmetic kit of Jackson for the purpose of securely restrain the cosmetic receptacles as well as providing an easy access to the cosmetic material. And it would also have been an obvious matter of design choice to construct each of the cutout portions pictorially representing a different of a human face in order to match the shape of the receptacles of Jackson and also since such a modification would involved a change in the shape of a known element to obtain the desired results.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shih is cited to show the state of the art with respect to a cosmetic compact having receptacles with design. Cohen, Schefer and Sussman are

cited to show the state of the art with respect to a cosmetic holder having cutout portions.

The drawings filed 03/31/2004 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
Art Unit 3732